

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. Box 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

MARYELLEN NOREIKA
302 351 9278
302 425 3011 FAX
mnoreika@mnat.com

September 21, 2007

The Honorable Joseph J. Farnan, Jr.
United States District Court
For the Eastern District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Affymetrix, Inc. v. Illumina Inc.*
C.A. No. 04-CV-901 JJF

Dear Judge Farnan:

On September 13, 2007, Illumina filed its Motion to Vacate as a Matter of Law the Jury's Verdict of Infringement Under the Doctrine of Equivalents on the Basis of Prosecution History Estoppel. (D.I. 444). The parties had previously stipulated (D.I. 433) that post-trial JMOL motions would be addressed at the appropriate time as established by the Court. Affymetrix believes that Illumina's motion should be addressed at the time the other post-trial motions are addressed. Thus, Affymetrix asks that the schedule for briefing of motions be discussed at the October 10 conference and that the Court enter the attached Order postponing the time for Affymetrix to respond pending that discussion.

Additionally, in advance of the October 10 conference, Affymetrix also asks the Court to consider its pending motion (D.I. 272) regarding assignor estoppel. A ruling in Affymetrix's favor on this motion would streamline the upcoming Phase II trial.

Respectfully,



Maryellen Noreika

MN/dlb

Enclosure

cc: Clerk of Court (Via Hand Delivery; w/ encl.)
Richard K. Herrmann, Esquire (Via Electronic Mail and Hand Delivery; w/ encl.)
Marcus E. Sernel, Esquire (Via Electronic Mail; w/ encl.)